We submit that there is just as pressing a need here for shaping judicial remedies designed to guard against abuse of official power. Just as this Court recognized in *Mapp* that local officials could not be counted on to punish or otherwise deter police officials who engaged in flagrant violations of the Fourth Amendment, so here the Court should recognize that it cannot count on the state courts to prevent abuse of the injunctive power in violation of the First.

4. It may be argued that the impairment of First Amendment freedoms under the Alabama rule must be accepted to avert the danger of widespread defiance of court orders that would result from the rule proposed by petitioners. We submit that that danger is illusory. Under petitioners' rule, a person violating an injunction because he believes it unconstitutional would run the risk of going to jail if the courts ultimately rejected his constitutional claim. That is a risk that would be taken only when important principles were at stake and the injunction appeared to be clearly unwarranted. In such exceptional cases, the person asserting First Amendment rights can be given the opportunity to risk his freedom without significantly disturbing law and order.

5. In *Poulos* v. *New Hampshire*, 345 U. S. 395 (1953), Justice Black, dissenting, said (345 U. S. at 422):

> * * * the First Amendment * * * prohibits a state from convicting a man of crime whose only offense is that he makes an orderly religious appeal after he has been illegally, "arbitrarily and unreasonably" denied a "license" to talk. This to me is a subtle use of a creeping censorship loose in the land.

Because we believe that this principle should apply to all cases arising under the First Amendment—political as well as religious—we urge this Court to grant the pending petition for rehearing.

Respectfully submitted,

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Attorneys for American Jewish Congress, Amicus Curiae

August, 1967

SUPREME COURT, U. S.

AUG 31 1967

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 249.

WYATT TEE WALKER, MARTIN LUTHER KING, JR., RALPH ABERNATHY, A. D. KING, J. W. HAYES, T. L. FISHER, F. L. SHUTTLESWORTH and J. T. PORTER,
Petitioners,

vs.

CITY OF BIRMINGHAM a Municipal Corporation of the State of Alabama,
Respondent.

OBJECTIONS TO MOTION OF AMERICAN JEWISH CONGRESS FOR LEAVE TO FILE AMICUS CURIAE BRIEF.

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CITY OF BIRMINGHAM a Municipal Corporation of the State of Alabama,
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OBJECTIONS TO MOTION OF AMERICAN JEWISH CONGRESS FOR LEAVE TO FILE AMICUS CURIAE BRIEF.

Respondent, City of Birmingham, has heretofore declined to consent to the filing of brief amicus curiae on behalf of the American Federation of Labor and Congress of Industrial Organization (AFL-CIO). For identical reasons, we have declined to consent to an amicus brief filed on behalf of American Jewish Congress. Respondent, City, has heretofore filed its Objections to Motion for Leave to File Amicus Brief on behalf of said labor organization for reasons stated, including the following: (I) Delay to this point in the proceeding, after decision by this Honorable Court should bar its filing; (II) The opinion and decision of this Honorable Court is based upon thorough consideration and careful determination of fundamental issues concerning respect for our courts and

and for law and order,[1] not in a factual situation relating to labor (and we may now also add—freedom of religion), but one involving the right of a municipality to protect its citizens in the use of its streets and sidewalks and from mob violence but was rendered with an awareness of the cases involving organized labor (and we now add freedom of religion) many of which were cited and discussed by the parties in lengthy briefs and argument and some by the Court in its opinion; and lastly (III) It poses no serious threat to the legal and constitutional rights of the organized labor movement, or any other group, racial or religious, either minority or majority.

I.

For the sake of brevity, we respectfully adopt our statement of said objections filed in response to the AFL-CIO Motion and the elaboration thereof in I, II and IV, pages 2, 3, 4 and 7, as fully as though stated herein. Point III was presented with emphasis upon the labor cases cited and discussed by counsel for the parties to this cause or by this Honorable Court which were cited by the movant, labor organization. Similarly, most of the cases cited by the present movant were called to the attention of the Court by the parties, and some of them cited were by the Court in its opinion. These include: **Poulos v. New Hampshire**, 345 U. S. 395 (1953); **Thomas v. Collins**, 323 U. S. 516, 530 (1944); **National Association for the Advancement of Colored People v. Alabama**, 377 U. S. 288 (1964) and **N. A. A. C. P. v. Alabama**, 357 U. S. 449 (1958).

[1] The joint news release of April 11, 1963, by petitioners, Walker, King, Abernathy and Shuttlesworth, proclaimed that "in all good conscience, we cannot obey unjust laws, neither can we obey the unjust use of courts" (R. 410). We construe this statement to be an extension of the so-called doctrine of "civil disobedience" which we feel should be and has been repudiated by this Honorable Court in its decision in this case.

II.

We do not understand the principle of **Mapp v. Ohio,** 367 U. S. 643 (1961), to be in conflict with the Court's decision in this case. Nor can we find in such decision any impairment of any constitutional right of religious freedom. It does reaffirm the simple principle that a city still has the right and duty to preserve peace and order in the use of its streets and to protect its citizens from mob violence. It reaffirms the principle of **Howat v. Kansas,** 258 U. S. 181 (1922), which was followed in **United States v. United Mine Workers,** 330 U. S. 258, 290-298 (1947), that one may not with impunity flout an injunctive decree issued by a court acting in good faith in a case where it has jurisdiction over the parties and the subject matter, without taking any steps whatever toward its dissolution or modification. In other words, it again puts the stamp of approval upon obedience to the courts and the law. Otherwise, as this Honorable Court has so aptly said on many occasions, anarchy and mob rule will result to the inevitable complete destruction of all constitutional rights and privileges, including those in the preservation of which movant has expressed interest.

CONCLUSION.

We respectfully request this Honorable Court to deny the Motion for Leave to File Amicus Curiae Brief on behalf of American Jewish Congress.

Respectfully submitted,

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EARL McBEE,

Attorneys for Respondent.